UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CYNTHIA SIWULEC,

Plaintiff,

-against-

CLASS ACTION COMPLAINT
Case No.:

ZUCKER, GOLDBERG & ACKERMAN, LLC,
and JOHN DOES 1-10,

Defendants.

COMPLAINT FOR VIOLATIONS
OF THE FAIR DEBT COLLECTION PRACTICES ACT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages arising from the defendants' violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

Introduction

2. This action seeks redress for the illegal practices of Defendants, concerning the collection of debt, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. ("FDCPA").

Jurisdiction and Venue

3. This Court has Federal question jurisdiction under 28 U.S.C. § 1331. Venue is proper in this District because the acts and transactions that give rise to this action occurred, in substantial part, in this District. Additionally, Plaintiff resides in this District.

4. Plaintiff is a resident of the State of New Jersey. Defendant Zucker, Goldberg & Ackerman, LLC (hereinafter ZGA) brought a foreclosure action against Siwulec to foreclose on Siwulec's home, located in Monmouth County, New Jersey.

5. Plaintiff is a "Consumer" as that term is defined by § 1692(a)(3) of the FDCPA in that the alleged debt that the Defendants sought to collect from Plaintiff is a consumer debt.

6. Upon information and belief, Defendant ZGA is an active New Jersey business, which violated the FDCPA from within the State of New Jersey. Defendants named as John Does 1-10 are members or employees of ZGA who were materially involved in the actions complained of herein.

7. Defendants are regularly engaged in the collection of debts allegedly owed by consumers.

8. Defendants are thus "Debt Collectors" as that term is defined by § 1692(a)(6) of the FDCPA.

9. Plaintiff received direct communications from Defendants, in the form of an initial written notice, accompanied by a summons and complaint relating to a foreclosure dated April 7, 2014. Attached hereto as Exhibit "A" is a copy of the notice together with the cover letter and a copy of the summons. Said communication violates the FDCPA. Said communication fails to properly indicate the amount of the debt in violation of 15 USC § 1692g(a)(1).

10. Defendant also violated §§ 1692g and 1692e by serving the validation notice with the summons and complaint, thereby confusing the consumer regarding his obligations to answer the complaint and the effectiveness of disputing the debt. The rights under the

notice were overshadowed by the summons, since a different timeline is given to the consumer in each document. The language is certainly confusing and is subject to a reasonable interpretation that is false.

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of plaintiff and all consumers and their successors in interest (the "Class") who have received 30 day notices which failed to properly indicate the amount of the debt in violation of 15 USC § 1692g(a)(1) in a manner materially the same as the notice attached as Exhibit "A." Excluded from the Class is the Defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the Defendants, including, without limitation, persons who are officers, directors, employees, associates or partners of Defendants.

12. Additionally, a second Class should be represented by Plaintiff for those Class members similarly situated with Siwulec who have received a 30 day notice accompanied by a summons from the Defendants as of one year prior to the filing of Plaintiff's complaint until 20 days thereafter. The time restrictions and exclusions from paragraph 10 shall apply to this Class as well. All other class action references contained herein shall likewise apply to this Class.

13. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

14. The Class members are so numerous that joinder of all members is impracticable. Upon information and belief, 40 or more persons have received debt collection notices from the Defendants, which violate various provisions of the FDCPA.

15. There are questions of law and fact which are common to each Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the Defendants violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § §1692g and e.

b. Whether Plaintiff and the Class have been injured by the defendants' conduct; and

c. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendants' wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution.

16. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

17. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

18. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

19. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender.

20. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs

complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights.

21. Defendants have acted on grounds generally applicable to the entire Class, thereby making appropriate relief with respect to the Class as a whole.

AS AND FOR A FIRST CAUSE OF ACTION

22. Plaintiff re-alleges and incorporates herein by reference, all the foregoing paragraphs as if set forth fully herein.

23. Upon information and belief, the notice is a form notice sent by Defendants to the Plaintiff.

24. Collection letters, such as those sent by Defendants, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

25. Section 1692g requires the debt collector to give the consumer various information within five days of its communication with the consumer.

26. Defendants violated § 1692g, by failing to inform the consumer of the amount owed within 5 days of its initial communication with the defendant.

27. Defendants also violated § 1692g by serving the validation notice with the summons and complaint, thereby confusing the consumer regarding his obligations to answer the complaint. The rights under the notice was overshadowed by the summons, since a different timeline is given to the consumer in each document. The language is certainly confusing and is subject to a reasonable interpretation that is false.

AS AND FOR A SECOND CAUSE OF ACTION

28. Plaintiff re-alleges and incorporates herein by reference, all the foregoing paragraphs as if set forth fully herein.

29. Upon information and belief, the notice sent along with the Summons & Complaint is a form letter sent by defendant to the plaintiff. Attached as Exhibit "A" is a redacted copy of the notice received by plaintiff.

30. Collection letters with a notice, such as those sent by defendant, are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

31. Section 1692(e) prohibits a debt collector from using false, deceptive or misleading means when attempting to collect an alleged debt from a consumer.

32. Service of the summons together with the 30 day notice creates false expectations within the mind of the least sophisticated consumer and falsely implies that the plaintiff in the foreclosure action, without providing additional verification, could proceed with foreclosure even if the consumer had disputed the debt.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment as follows:

a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;

b) Awarding Plaintiff and the Class statutory damages;

c) Awarding Plaintiff and the Class costs of this action, including reasonable attorneys' fees and expenses; and

d) Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

Dated: Cedarhurst, New York
December 23, 2014

Plaintiff requests trial by jury on all issues so triable.

s/Lawrence Katz
Lawrence Katz
445 Central Avenue Suite 201
Cedarhurst, New York 11516
Telephone (516) 374-2118
Facsimile (516) 706-2404

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The undersigned attorney of record for plaintiff does hereby certify to my own knowledge and based upon information available to me at my office, the matter in controversy is not the subject of any other action now pending in any court or in any arbitration or administrative proceeding.

s/Lawrence Katz
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Cedarhurst, New York 11516
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Facsimile (516) 706-2404